

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

ROBERTO RUZZA and ANGELA RUZZA,

Plaintiffs-Appellees,

v

EDWARD FUGATE,

Defendant-Appellant,

and

T. ROBINSON and NULITE, INC.,

Defendants.

---

UNPUBLISHED

March 27, 2007

No. 265680

Macomb Circuit Court

LC No. 2005-001066-AV

Before: Owens, P.J., and Neff and White, JJ.

PER CURIAM.

Defendant appeals by leave granted the circuit court's order affirming the district court's award of money damages in the amount of \$25,000 and attorney fees in the amount of \$2,000 to plaintiffs. We vacate the portion of the district court judgment awarding money damages and attorney fees in favor of plaintiffs.

In 1995, plaintiffs Roberto Ruzza and Angela Ruzza entered into a lease agreement with defendant Nulite Inc. ("Nulite"). On April 27, 2004, plaintiffs filed, in the district court, a complaint for termination of tenancy against defendants Nulite, Thomas Robinson, and Edward Fugate. Robinson and Fugate were the owner and manager, respectively, of Nulite. Plaintiffs also filed a supplemental complaint against defendants seeking money damages in the amount of \$48,600 for unpaid rent and late fees. After a summary proceeding, the district court entered a judgment awarding possession of the leased premises to plaintiffs. The district court also awarded plaintiffs a money judgment against defendants Nulite and Fugate in the amount of \$48,855, which included \$255 in costs. Defendant Fugate (hereinafter "defendant") moved to set aside the money judgment, arguing that because plaintiffs sought more than \$25,000 in money damages, the district court lacked subject matter jurisdiction over plaintiffs' supplemental complaint and, thus, the judgment was void. The district court denied defendant's motion; however, it modified the judgment by reducing the amount of money damages to \$25,000, to reflect the district court's jurisdictional limit. The district court also awarded attorneys fees to

plaintiff in the amount of \$2,000. The modified judgment was entered against defendant, individually. Defendant appealed, the circuit court affirmed, and this appeal followed.

Defendant first contends that the district court lacked subject matter jurisdiction over plaintiffs' claim for money damages.<sup>1</sup> Therefore, the district court erred in entering any money judgment against defendant and the circuit court erred in affirming the judgment. We agree.

Whether a court has subject matter jurisdiction is a question of law that we review de novo on appeal. *Citizens for Common Sense in Gov't v Attorney General*, 243 Mich App 43, 49-50; 620 NW2d 546 (2000). When reviewing a motion to dismiss for lack of subject matter jurisdiction, we must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law. *Cork v Applebee's of Michigan, Inc*, 239 Mich App 311, 315; 608 NW2d 62 (2000).

The district court has jurisdiction over summary proceedings to recover possession of property. MCL 600.5704. A party bringing a summary proceeding to recover possession of property may join a claim for money damages. However, the claim "shall not exceed the amount in controversy which otherwise limits the jurisdiction of the court." MCL 600.5739.

If a money claim or counterclaim exceeding the court's jurisdiction is introduced, the court, on motion of either party or on its own initiative, *shall order removal* of that portion of the action to the circuit court, if the money claim or counterclaim is sufficiently shown to exceed the court's jurisdictional limit. [MCR 4.201(G)(2)(b) (emphasis added).]

The word "shall" is unambiguous and denotes a mandatory, rather than discretionary, action. *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 65; 642 NW2d 663 (2002). In this case, plaintiffs brought a summary proceeding to recover possession of the leased premises. They joined a claim for money damages in the amount of \$48,600 for unpaid rent and late fees. Plaintiffs' claim clearly exceeded the district court's \$25,000 jurisdictional limit. MCL 600.8301(1). Thus, the district court was required to order removal of plaintiffs' supplemental claim for money damages to the circuit court. MCR 4.201(G)(2)(b). "Where the claim asserted exceeds the monetary limitation of the district court, the claim *must* be removed to the circuit court." *Adamski v Cole*, 197 Mich App 124, 128; 494 NW2d 794 (1992) (emphasis added).

A district court does not have jurisdiction beyond the statutory limitation provided in MCL 600.8301. *Brooks v Mammo*, 254 Mich App 486, 495; 657 NW2d 793 (2002). "When a court is without jurisdiction of the subject matter, any action with respect to such a cause, other than to dismiss it, is absolutely void." *Todd v Dep't of Corrections*, 232 Mich App 623, 628; 591 NW2d 375 (1998). See also *In the Matter of Hague*, 412 Mich 532, 544; 315 NW2d 524 (1982). Because the district court did not have jurisdiction over plaintiffs' supplemental claim for money damages, any action taken by the district court concerning the claim was void. Thus, the money judgment entered by the district court was void.

---

<sup>1</sup> Plaintiffs have not submitted a brief on appeal, and we thus do not have the benefit of response arguments.

Defendant next contends that the circuit court erred in affirming the district court's award of attorney fees in favor of plaintiffs. We review a trial court's award of attorney fees for an abuse of discretion. *Windemere Commons I Ass'n v O'Brien*, 269 Mich App 681, 682; 713 NW2d 814 (2006).

Plaintiffs' counsel requested \$2,000 in attorney fees as compensation for the four court appearances that he made and for the multiple briefs and responses that he filed in this matter.<sup>2</sup> However, after the summary proceeding in this case, neither party challenged the portion of the district court's order awarding possession of the leased premises to plaintiffs. The majority of the court appearances, briefs, and responses referenced by plaintiffs' counsel in his request for attorney fees were directly related to plaintiffs' claim for money damages. Because the award of attorney fees in this case derived from plaintiffs' supplemental claim for money damages, and because any action taken by the district court concerning plaintiffs' claim for money damages was void for lack of subject matter jurisdiction, the portion of the district court order awarding attorney fees in favor of plaintiffs was void. *Matter of Hague*, *supra* at 544; *Todd*, *supra* at 628.

Furthermore, we find that plaintiffs were not entitled to an award of attorney fees in this case. Generally, an award of attorney fees as an element of costs or damages is prohibited unless it is expressly authorized by statute or court rule. *Windemere*, *supra* at 683. Neither plaintiffs nor the district court cited any statute or court rule that authorized an award of attorney fees in this case. Moreover, although trial courts possess the inherent authority to sanction litigants and their counsel, *Maldonado v Ford Motor Co*, 476 Mich 372, 389; 719 NW2d 809 (2006), the district court did not have the inherent authority to impose sanctions or order an award of attorney fees under the circumstances of this case. Defendant's motion for relief from the judgment for lack of subject matter jurisdiction was proper. Plaintiffs were not forced to expend money to defend because of the wrongful acts of others. See *Persichini v William Beaumont Hosp*, 238 Mich App 626, 639 n 7; 607 NW2d 100 (1999). Further, the district court failed to conduct any assessment regarding the reasonableness of the requested fees. See *Windemere*, *supra* at 683. Nothing in the record indicates that the district court's determination with regard to a reasonable attorney fee was made on the basis of appropriate criteria. *Michigan Tax Mgt Services Co v City of Warren*, 437 Mich 506, 509-510, 512; 473 NW2d 263 (1991). Thus, the district court abused its discretion in awarding attorney fees to plaintiffs, and the circuit court erred in affirming the award of attorney fees.

We vacate the portion of the district court judgment awarding money damages and attorney fees in favor of plaintiffs. MCR 2.612(C)(1)(d); MCR 7.216(A)(7).

/s/ Donald S. Owens  
/s/ Janet T. Neff

---

<sup>2</sup> It is unclear from the record what specific court appearances, briefs and responses plaintiffs' counsel was referring to and whether they were related to the summary proceeding or only to money judgment entered by the trial court.